

Decision 02-05-029 May 16, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The Utility Reform Network, the California
Mobile Home Resource and Action Association,
and Does 1-100,

Complainants,

vs.

Four Seasons Mobile Home Park, The Franciscan
Mobile Country Club, Rancho Santa Teresa
Mobile Home Estates, Diablo Mobile Lodge,
Friendly Village Mobile Home Park, Pepper Tree
Estates Mobile Home Park, Spanish Ranch
Mobile Home Park Number 1, Riverbend
Mobilehome Park, Hilton Mobile Home Park,
Hillview Mobile Home Park, and Does 1-100,

Defendants.

Case 00-08-035
(Filed August 23, 2000)

**OPINION GRANTING REQUEST BY THE UTILITY REFORM NETWORK FOR
COMPENSATION FROM THE ADVOCATES TRUST FUND**

This decision grants The Utility Reform Network (TURN) an award of \$10,585.88 from the Advocates Trust Fund (ATF) in compensation for its contribution to Decision (D.) 01-08-063.

1. Background

D.01-08-063 closes the above-captioned complaint brought by TURN and the California Mobile Home Resource and Action Association (CMHRAA)

against 10 mobile home parks. In its complaint, TURN and CMHRAA alleged that the 10 mobile home parks violated Public Utilities Code Section 739.5 by failing to disburse gas rebates to their sub-metered customers. Parties agreed to a stipulation once TURN and CMHRAA were satisfied that the mobile home parks had disbursed all of the approximately \$120,000 in gas rebates to their sub-metered customers. The Commission modified the stipulation to provide for the payment of interest on the moneys returned to the mobile home parks' sub-metered customers.

2. Procedural History

TURN and CMHRAA filed their complaint against the 10 mobile home parks on August 23, 2000, alleging that defendants received gas refund credits which were not distributed to their sub-metered customers. TURN was the initiator of the complaint, and negotiated with the parties to reach a stipulation, which the Commission approved, with modification. TURN timely filed its Notice of Intent on April 6, 2001, and, in a May 18, 2001 Ruling, the assigned Administrative Law Judge (ALJ) found that TURN had met the criteria to be eligible for an award from the ATF.

On October 22, 2001, TURN filed its Request for Compensation. Consistent with the requirement of § 1804(c), TURN's request was filed within 60 days of August 23, 2001, the date of the issuance of D.01-08-063. Therefore, TURN's request was timely filed. TURN requests an award of \$10,873.38 for its contributions to D.01-08-063. No opposition to TURN's request was filed.

3. Requirements for Awards from ATF

The rules governing administration of the ATF and the criteria for granting awards from the ATF are set forth in the "Declaration of Trust" (Declaration) dated October 11, 1982. Prior to execution, this document was approved by the

Commission in D.82-05-009 and D.82-08-059. The language of the executed Declaration was subsequently modified in D.92-03-090.

The Declaration, Section 1.2, provides that the ATF is created to defray expenses related to litigation of consumer interests in "quasi-judicial complaint cases." The complaint brought by TURN falls within this category. Because this threshold requirement is met, the TURN Request will be evaluated to determine if it meets the criteria for an award.

The criteria to be considered in determining eligibility for an award are set forth in the Declaration, Sections 1.3 and 1.4. Section 1.3 provides that an award may be granted only where the private party has made a "direct, primary, and substantial contribution" to the result of the case. Fees will be awarded where (1) complainants have generated a common fund that is not adequate to meet reasonable attorney or expert witness fees; (2) a substantial benefit has been conferred upon a party or members of an ascertainable class, but no means are available for charging those who benefited with the cost of obtaining the benefit; or (3) where complainants have acted as private attorney general in vindicating an important principle of statutory or constitutional law, but no other means or fund is available for award of fees.

Section 1.4 provides an award will be based upon consideration of four factors: (1) the societal importance of the public policy vindicated; (2) the necessity for private enforcement and the magnitude of the burden on the complainant; (3) the number of people standing to benefit from the decision; and (4) the magnitude of the party's own economic interest in the litigation.

3.1 Contribution to Resolution of Case

The Declaration, Section 1.3, provides that attorneys' fees may be awarded only where it is clearly and convincingly demonstrated that the private

party has made a direct, primary, and substantial contribution to the result of the case. In its Request, TURN points out that its work in this case meets the substantial contribution test. Beginning in late July 2000, TURN sent demand letters to mobile home parks which stated that action would be taken at the Commission unless the parks provided evidence that gas refunds from PG&E had been credited to sub-metered customers. On August 23, 2000, TURN filed a formal complaint on behalf of the CMHRAA and its members who are sub-metered customers at the defendant parks. As a result of this complaint filing, the named defendants passed through refunds in the months of September, October and November.

Subsequent to filing the complaint, TURN sought to negotiate a stipulation with the defendants to curtail the need for additional proceedings at the Commission. Once TURN had proof that refunds had been properly credited, TURN began working with representatives of defendant park owners to draft a stipulation document that was intended to close the complaint case. The stipulation was submitted to the Commission on March 28, 2001. All the findings in the stipulation were adopted in the final decision, with the exception of the provision exempting park owners from making interest payments on delayed refunds. However, the Commission did accept a subsequent recommendation from TURN with respect to the calculation and verification of interest credits. With this modification, the Commission concluded that the settlement "is reasonable...and is in the public interest."

TURN asserts that absent its work representing the sub-metered customers, it is unlikely that any formal complaint would have been filed with the Commission and virtually certain that some, if not most, of the plaintiffs would have failed to receive timely refunds from the defendant park owners.

TURN's initial efforts spurred park owners to pass through the full rebates without further delay. The stipulation, as modified, shows the fruit of TURN's involvement and provided the Commission with a clear basis for adopting its findings and ordering the proceeding closed. Upon review of the decision, we concur with TURN that TURN's participation made a direct, primary, and substantial contribution to the decision.

3.2 No Means of Charging Costs of Obtaining Benefit to Benefited Class

Section 1.3 provides three ways to demonstrate eligibility for an award. TURN meets the second of these, which reads as follows: "Fees will be awarded from the ATF where a substantial benefit has been conferred upon a party or members of an ascertainable class, but no means are available for charging those benefited with the cost of obtaining the benefit..." As a result of TURN's contributions in the proceeding, TURN estimates that approximately 2,000 sub-metered customers at the 10 defendant mobile home parks received gas rebates that were owed to them. This is a benefit that has been conferred upon an ascertainable class (namely, the sub-metered customers at the mobile home parks), but there is no means available for charging TURN's litigation expenses to this class. The defendant mobile home parks are not public utilities as defined by the Public Utilities Code, which makes a claim for reimbursement impossible under the current statutory intervenor compensation program administered by the Commission. Also, TURN points out that the sub-metered customers represented by TURN live in mobile home parks, are predominantly low-income, and simply cannot afford to bear the costs associated with legal representation.

3.3 Section 1.4 Requirements

The Declaration, Section 1.4 provides that an award will be based upon consideration of four factors. The first factor is the strength or societal importance of the public policy vindicated. As TURN says, the importance of enforcing this policy goes beyond the rebates paid to the sub-metered customers of the 10 mobile home parks. The Commission's order should assist plaintiffs when future gas or electric refunds are ordered by placing park owners on notice that they will be subject to Commission action if sub-metered customers are not promptly credited with the amounts owed.

The second factor to be considered is the necessity of private enforcement and the magnitude of the burden on the complainant. TURN asserts that documentation provided to TURN indicates that many individual sub-metered customers sought refunds but were rebuffed by park management. Since there was a clear violation of § 739.5, and the plaintiffs were unable to obtain relief through individual negotiations with park owners, there were no other remedies apart from initiating a complaint at the Commission. In addition, the large number of defendants involved in this complaint suggests the difficulties inherent in conducting private negotiations outside of a formal proceeding at the Commission. It was therefore far more efficient for this issue to be resolved in the context of a Commission proceeding.

The third factor to be considered is the number of people standing to benefit from the decision. While the exact number of people who benefited is not known, TURN estimates that "well over 2,000 individual plaintiffs stood to benefit," which points to the appropriateness of an award to TURN. As a result of TURN's involvement, the 2,000+ sub-metered customers received gas rebate refunds. An indeterminate number of future sub-metered customers could

receive refunds as a result of the Commission's action in approving the stipulation.

The final factor to be considered is the magnitude of a party's own interest in the litigation. In this case, TURN is not entitled to receive any of the refunds that were the central focus of this complaint. Therefore, TURN had no personal stake in the complaint case and did not gain in any way from the outcome of the case. Absent an award from the ATF, TURN does not anticipate any other funding source is available to pay for the expenses incurred in this proceeding.

4. Reasonableness of Requested Compensation

TURN requests compensation in the amount of \$10,873.38 as follows:

Consultant's Fees

Jeff Nahigian	(4.0 hours at \$100/hour)	=	\$ 400.00
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Attorneys' Fees

Bob Finklestein	(0.5 hours at \$280/hour)	=	\$ 140.00
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Paul Stein	(20.5 hours at \$200/hour)	=	4,100.00
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Marcel Hawiger	(.25 hours at \$185/hour)	=	46.25
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Matthew Freedman	(22.25 hours at \$200/hour)	=	4,450.00
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Matthew Freedman	(13 hours at \$100/hour)	=	1,300.00
(preparation of compensation request)			

Total Consultant and Attorney Fees	=	\$10,436.25
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Additional Costs

Photocopying expense	=	\$ 342.47
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Postage costs	=	19.74
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Fax charges	=	24.40
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Phone costs	=	14.72
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Lexis charges	=	<u>35.80</u>
Subtotal	=	\$437.13
Total Compensation Requested	=	\$10,873.38

4.1 Hours Claimed

TURN documented the claimed hours by presenting a daily breakdown of hours for Nahigian, Stein, Finklestein, Hawiger and Freedman. For all hours claimed, detailed information is provided regarding the tasks performed. The hourly breakdown presented by TURN supports its claim for total hours. The hours spent on the identified tasks appear reasonable.

We note that Freedman's time spent working on the compensation request in October 2001 is billed at half the hourly rate. This practice is consistent with our finding in D.98-04-059, namely, that compensation requests are essentially bills for services and do not require an attorney's skill to prepare. Parties will be compensated for an attorney's time in preparing a request for compensation at half the attorney's hourly rate. The number of hours used to prepare the request appears reasonable.

We find the hours billed to be reasonable and fully compensable.

4.2 Hourly Rates

TURN seeks an hourly rate of \$100 per hour for the services of consultant Nahigian. TURN states that the Commission approved this rate of compensation for Nahigian for 2000 in D.01-10-008.

An hourly fee of \$280 is sought for the work of Bob Finklestein for work performed in 2000. This rate of compensation for Finklestein's work in 2000 was previously approved by the Commission in D.00-11-002.

The rate sought for Paul Stein is \$200 per hour for services in 2000. This rate of compensation for Stein's work in 2000 was approved by the Commission in D.01-09-011.

TURN seeks an hourly rate for Marcel Hawiger of \$185 per hour for work performed in 2000. This rate of compensation for Hawiger was approved by the Commission in D.09-10-008.

Lastly, TURN requests an hourly rate of \$200 for work performed by Matthew Freedman in 2001. The Commission has not yet established an appropriate hourly base rate for Freedman although a compensation request filed by TURN pending before the Commission seeks \$190 per hour for work performed in 2000. Freedman graduated from Harvard Law School in 1999 and joined TURN in early 2000.

From 1993 through 1998, Freedman served as Senior Energy Policy analyst and New England Representative for Public Citizen's Critical Mass Energy Project, where his work involved research, writing and legislative advocacy on a variety of energy policy issues including electric deregulation at the national and state levels. During 1998 and 1999, Freedman worked as a Policy Analyst for Massachusetts Public Interest Research Group performing policy analysis, legal research and providing regulatory representation on a variety of energy-related issues as the state implemented its restructuring of the electric industry.

TURN asserts that Freedman warrants the hourly rate of \$200 for work performed on this case in 2001. We disagree. Freedman's experience level as a relatively new staff attorney at TURN does not merit that level of compensation. However, on the basis of his extensive prior experience on matters relating to energy regulation, we find that he should be compensated at an Associate level rather than at a level we generally find appropriate for a second-year attorney.

On that basis, we will compensate him at the rate of \$190 per hour for the work he performed on this case in 2001.

4.3 Other Costs

TURN itemizes expenses for photocopying, postage, Fax, telephone, and Lexis charges. TURN provided detailed documentation, including the dates expenses were incurred and the nature of each expense. We find those miscellaneous expenses to be reasonable and fully compensable.

5. Award

We award TURN \$10,585.88 for its contribution to D.01-08-063. The award is calculated as follows:

Consultant's Fees

Jeff Nahigian	(4.0 hours at \$100/hour)	=	\$ 400.00
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Attorney's Fees

Bob Finklestein	(0.5 hours at \$280/hour)	=	\$ 140.00
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Paul Stein	(20.5 hours at \$200/hour)	=	4,100.00
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Marcel Hawiger	(.25 hours at \$185/hour)	=	46.25
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Matthew Freedman	(22.25 hours at \$190/hour)	=	4,227.50
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Matthew Freedman	(13 hours at \$95/hour)	=	1,235.00
(preparation of compensation request)			

Total Consultant and Attorney Fees	=	\$10,148.75
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<u>Other Costs</u>	=	\$ 437.13
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<u>Total Compensation Award</u>	=	\$10,585.88
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As in all intervenor compensation decisions, we put TURN on notice that the Commission staff may audit TURN's records related to this award. Thus, TURN must make and retain adequate accounting and other documentation to

support its claim for an award from the ATF. TURN's records should identify specific issues for which it requests compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation is claimed.

6. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. No comments were filed.

Findings of Fact

1. TURN made a timely request for an award from the ATF.
2. TURN made a direct, primary, and substantial contribution to D.01-08-063.
3. As a consequence of TURN's participation, a substantial benefit has been conferred upon sub-metered gas customers at the defendant mobile home parks.
4. No means are available for charging those who benefited with the cost of obtaining the benefit.
5. This case vindicated an important public policy.
6. Private enforcement of the issues litigated in this case was necessary to bring the issues to the attention of the Commission.
7. The burden to TURN of funding its participation is substantial in light of the fact that it did not stand to receive any part of the compensation awarded in this case, even if it prevailed on the issues.
8. The number of people standing to benefit from TURN's participation is substantial.
9. The hours claimed by TURN in its Request appear reasonable.
10. With the exception of time spent by Freedman in preparing TURN's compensation request, the hours claimed are compensable at full hourly rates.

11. With the exception of the hourly rate requested for Freedman, the hourly rates requested by TURN were all approved in prior Commission decisions. The rate requested for Freedman is not justified based on his limited experience with TURN. Instead, an hourly rate of \$190 is a reasonable rate for Freedman in 2001.

12. The other miscellaneous costs incurred by TURN in this proceeding appear reasonable.

Conclusions of Law

1. TURN has fulfilled the requirements of the Declaration of Trust which governs awards of compensation from the ATF.

2. TURN should be awarded \$10,585.88 for its contribution to D.01-08-063.

3. This order should be effective today, so that TURN may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network is awarded \$10,585.88, to be disbursed from the Advocates Trust Fund, in compensation for its substantial contribution to Decision 01-08-063.

2. This proceeding is closed.

This order is effective today.

Dated May 16, 2002, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

CARL W. WOOD

GEOFFREY F. BROWN

MICHAEL R. PEEVEY
Commissioners